THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.21332 of 1998

O R D E R:

This writ petition is filed by the workman aggrieved by the award dated 30-01-1997 passed in I.D.No.23 of 1994 on the file of the Labour Court-I, Hyderabad, the first respondent.

It is the case of the petitioner that he was appointed as a Driver in the respondent-Corporation in the year 1988 and has been performing his duties to the utmost satisfaction of one and all and gained good name. While so, on 28-07-1992, when he was driving the bus bearing No. AP 9 Z 2344 on the route Hyderabad-Upper Sileru Service, one Mr. V. Srimannarayana, Security Sub-Inspector of K.M.M. Depot tried to enter into the bus at inappropriate stage and the petitioner resisted the same. Consequently, the said Security Sub-Inspector made a false complaint before the second respondent stating that the petitioner was in intoxicated condition. Based on the said complaint, the petitioner was subjected to alcoholic test. On the allegation that the alcoholic test revealed suspicion, a charge sheet was issued with the following charge:

> *"For having found in intoxication condiction on 28-07-1992 while performing duty on 20-30 hours, Hyderabad in Upper Sileru Service on vehicle No.APZ 2344 which constitutes misconduct under Regulation 28 (xvii) and (xxxi) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963."*

The petitioner submitted his explanation on 05-08-1992 denying the said charge. However, the respondent-Corporation, having not satisfied with the explanation submitted by the petitioner, appointed an Enquiry Officer for a detailed enquiry into the matter. After enquiry, the Enquiry Officer submitted a report holding the petitioner guilty of

the charge. Ultimately, the Disciplinary Authority, according to the petitioner, without there being any acceptable and reliable evidence, based on the report submitted by the Enquiry Officer and after completion of formalities had passed an order of removal dated 16-02-1993. Aggrieved by the same, the petitioner filed an appeal before the Competent Authority and the same was rejected on 28-12-1983. Having no other option, the petitioner filed a claim petition under Section 2-A (2) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') and the same was taken on file as I.D.No.23 of 1994. Before the Labour Court, no oral or documentary evidence was adduced on behalf of the workman and on behalf of Corporation, no oral evidence was adduced, however, Exs.M-1 to M-12 were marked. The Labour Court, after consideration of the material available on record, held that if a lenient view is taken on the petitioner, it would endanger the lives and property of the commuters and as such rejected the claim of the petitioner. Accordingly, an award was passed, which according to the petitioner is arbitrary and illegal and liable to be set aside.

Though no counter-affidavit is filed on behalf of the respondents, the learned counsel for the respondents strenuously contended that it is a case of proven alcoholism of a driver while he was on duty and hence, a lenient view cannot be taken on the petitioner as was rightly observed by the Labour Court, for such misconduct. Therefore, the award passed by the Labour Court is just and proper and does not call for any interference of this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the submissions made by the learned counsel on either side and perused the award passed by the Labourt Court and other material made available on record.

At the outset, I am of the opinion that may be the Labour Court was

right in holding that the petitioner was guilty of the charge framed against him since there is some evidence and suspicion of alcoholism at that point of time on the part of the petitioner. Upon a perusal of the material made available on record, it cannot be said the misconduct was not proved. However, taking into consideration the clean service of the petitioner for a period of four years and also the very nature of misconduct, I am of the opinion that the Labour Court has not properly exercised its powers vested under Section 11-A of the Act. In the given circumstances of the case, the removal of the petitioner from service is disproportionate since it is not the case that the petitioner is not in a position to drive the bus at that point of time. In fact the contention of the petitioner is that when he refused the entry of the Security Sub Inspector into the bus at inappropriate stage, the said Security Sub Inspector complained against him alleging that he is in intoxicated condition while on duty, to which the petitioner fairly submitted that he is in the habit of taking some gutca, which smells in the same way as alcohol. Even, the alcoholic test did not indicate that he was in intoxicated condition and what all it revealed was suspicion of alcoholism, however, the percentage of alcohol or condition of the petitioner was not spoken to by any one of the witnesses and even it is not the case of the complainant i.e., the Security Sub Inspector that the petitioner was not in a position to drive the bus. In fact, it cannot also be said that the Labour Court was wrong in approving the finding of fact as to the alcoholism of the petitioner. However, purely based on some test, which revealed suspicion of alcoholism, the services of the petitioner were suspended though there is no evidence to show that the petitioner was not in a position to drive the bus and he was not alert or was not able to control himself at the relevant time. In view of the above and in view of the clean service of the petitioner for a period of four years, I am of the opinion that the Labour Court ought to have given an opportunity to the petitioner by exercising its powers under Section 11-A of the Act to prove his conduct.

Accordingly, the award passed by the Labour Court is modified to the extent of directing the respondents to reinstate the petitioner with continuity of service but without any back wages and without any attendant benefits including the notional increments.

The writ petition is allowed to the extent indicated above. No costs.

(C.V.RAMULU, J)

Dated: 12-08-2005

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THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.21332 of 1998

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Dated: 12-08-2005

Between:

K. Venkat Reddy. ..Petitioner.

And

The Labour Court-I, A.P., Hyderabad, and another.

..Respondents.